

HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION NO. 27727 OF 1998

Between:

M/s Sri Srinivasa Oil Distributors, Dealer for Indian Oil rep. By its Proprietrix, Pati Hanumayamma, W/o late Venkata Swamy, Guntur.,

...Petitioner

AND

The Senior Divisional Manager, Indian Oil Corporation Limited, Vijayawada and one another

....Respondents

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HON'BLE SRI JUSTICE R. SUBHASH REDDY

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ORAL ORDER:

The petitioner is the dealer of Indian Oil Corporation Limited, having its outlet at Nagaram Palem, Guntur District. It is stated in the affidavit that he is dealing with the products of respondent-Corporation for the last more than three decades and due to ill-health and domestic problems, he could not supervise the outlet during the month of June, 1998. On 21.6.1998, the outlet of the petitioner was inspected and a show cause notice dated 24.6.1998 was issued. In the show-cause notice, it is alleged that during the inspection stock variation of MS and HSD Oil were found beyond permissible limit and the density of the HSD oil in Tank No. 2 was also found beyond permissible limit. The sample drawn from HSD Tank No. 2 failed in furfural test. To the said show-cause notice, a detailed explanation was filed on 31.7.1998. In her explanation, it is stated that she was the dealer for the last more than three decades and she was distributing oils by duly following the guidelines of the company. It is also stated that due to ill-health and also on account of some domestic problems, she could not supervise the business personally and his grand-son by name J. Pradeep Kumar and the Manager Sri Laxmana Rao were taking care of the outlet. It is also stated that as the manager of the firm was not discharging the duties properly, his services were terminated by settling his accounts. After submission of the explanation by the petitioner, the impugned

proceedings came to be passed.

In the above said proceedings, though explanation of the petitioner is referred to but by merely recording a finding that the explanation is not satisfactory a fine of Rs. 1,00,000/- (Rupees One Lakh Only) is imposed apart from suspension of sales and supply for a period of 45 days, taking it as the first instance of such failure in the retail outlet of the petitioner.

In this Writ Petition, it is submitted by the learned counsel for the petitioner that the penalty imposed in the impugned order is arbitrary and illegal. It is further submitted that though a detailed explanation is filed, the same has not been considered. It is also her case that, with regard to passing of an order either for suspension of sales or imposition of penalty, there was no show-cause notice at all.

On the other hand, a counter affidavit is filed by the Senior Divisional Manager of the respondent Corporation stating that when the officials of the Corporation had inspected the outlet of the petitioner on 21.6.1998, they noticed certain discrepancies and after issuing show cause notice dated 24.6.1998, and, on considering the reply and the guidelines of the Corporation, the impugned order is passed.

I have perused the show-cause notice dated 24.6.1998 basing on which the impugned order is passed. In the notice dated 24.6.1998, explanation is called for only with regard to discrepancies viz., stock variation and density variation etc. However, the petitioner was not issued with any notice either for suspension of sales or for imposition of heavy penalty of a lakh of rupees. In any event, even with reference to the show cause notice dated 24.6.1998, the petitioner had filed a detailed explanation, but however, in the impugned order without taking into account the

various reasons shown by the petitioner in her explanation, by merely recording a finding that the explanation filed by the petitioner is not satisfactory, the impugned order is passed. It may be that the Marketing Discipline Guidelines issued by the Corporation empower, the respondent for imposition of penalty to a tune of rupees one lakh apart from suspension of the sales, but when a show cause notice is issued with a specific allegation and when a detailed explanation is filed thereto, it is expected that valid reasons are recorded for imposing such heavy penalty of a lakh of rupees and also before ordering suspension of sales for about 45 days.

This court by order dated 9.11.1998, suspended the impugned order, as an interim measure on depositing an amount of Rs. 50,000/-.

As much as the explanation of the petitioner is not considered, in a proper perspective with reference to the reasons shown by her in the said explanation, I deem it appropriate that it is evidently a fit case for fresh consideration by the respondents. Accordingly, the order under challenge dated 11.8.1998 passed in proceedings No. VJR/456 is set aside and the matter is remitted back for fresh consideration by the respondent-Corporation. The respondent shall take into account the explanation submitted by the petitioner before passing any further order. Further, it is also open for the petitioner to file any additional explanation within a period of two weeks from the date of receipt of a copy of this order. If any such additional explanation is filed, the respondents shall also consider the same before passing any order. The amount of Rs. 50,000/- which is paid pursuant to the order of this court dated 9.11.1998, will be subject to further orders to be passed by the respondents.

Writ Petition is disposed of accordingly with a direction to the

respondents referred to above. No order as to costs.

R. SUBHASH

REDDY, J

Date: 19.4.2007
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